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In The

Supreme Court of the United States

October Term, 1972

No. 72-242

DENIS HANLY, et al.,

Petitioners,

vs.

RICHARD E. KLEINDIENST, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

This memorandum is being submitted in reply to respondents' memorandum. Since our petition was prepared, the United States District Court for the Southern District of New York, has held that the General Services Administration's (GSA) June 15, 1972 determination (see Pet. 30-32) complied with the National Environmental Policy Act (NEPA) [42 U.S.C. Sec. 4332(2)(C)]. Petitioners are taking an appeal from this latest order and have already filed a brief with the United States Court of Appeals for the Second Circuit.

These latest developments point out the necessity for obtaining Supreme Court review of this case. The result of the Court of Appeals' earlier decision (Pet. 1a-17a) has been to bar any true compliance by the respondents with NEPA.

Meanwhile, construction of the jail is continuing. Soon it will be too late to turn back from respondents' decision to build a jail should this Court decide that respondents have not complied with NEPA.

Respondents claim this case is not "ripe for review" (p. 3). However, the issues sought to be reviewed involve important questions and are fundamental to the further conduct of the case. Thus, immediate review by this Court is appropriate.

In Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 20 (1960), this Court granted certiorari to review the lower court's order transferring venue for the reason that the issue presented was an important question. (See also Beacon Theatres v. Westover, 359 U.S. 500, 501 (1959).)

In United States v. General Motors Corp., 323 U.S. 373, 377 (1945), this Court granted certiorari to review what items were to be considered in a new trial to ascertain compensation resulting from a taking of property by eminent domain on the grounds that this issue was fundamental to the further conduct of the case. (See also Land v. Dollar, 330 U.S. 731, 734 (1947).)

Cobbledick v. United States, 309 U.S. 323, 325 (1940), cited by respondents (p. 3), actually supports certiorari in this case. The Court there

said that certiorari would be granted where waiting until the case was completed in the lower courts would practically defeat the right to any review at all. The court cited as an example the predecessor of 28 U.S.C. Sec. 1292(a)(1) which grants the right to appeal in all cases involving interlocutory injunctions.

Obviously, our case is a prime candidate for immediate review. The lower courts are proceeding under a weakened interpretation of NEPA. Should petitioners have to wait until a final judgment below, they will effectively be denied any review because the jail will be well on its way to completion.

Respondents claim that petitioners are seeking review of a "factual matter" (p. 3). Actually, this case involves whether respondents complied with NEPA. The answer depends on NEPA's meaning which is a question of law. (See Pet. 26-28.)

Petitioners contend that GSA's determination that no environmental impact statement was required violated NEPA. The Court of Appeals, in spite of finding that GSA had ignored the most crucial factors in determining that no statement was required, gave GSA another chance to make its own determination whether to file an impact statement. Such a decision invited GSA to resubmit its earlier determination in altered form, which is just what happened.

Thus, this case involves only issues of law.

Respectfully submitted,

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October 1972